

Center for Youth Leadership
Brien McMahon High

Stamford Youth Services Bureau
Mayor's Youth Leadership Council at Stamford High

Connecticut Legislature: Education Committee
Testimony in Opposition to HB 5170: An Act Concerning Students'
Rights to Privacy in Their Mobile Electronic Devices
February 26, 2018

Hello Representative Fleischmann, Senator Slossberg, Senator Boucher and members of the committee. We have a special greeting for those who represent our hometowns of Norwalk and Stamford: Representative Lavielle, Representative Morris, and Representative Miller.

My name is Alejandra Bonilla and I am a member of the Center for Youth Leadership at Brien McMahon High. I am joined by Nathalie Medero of the Mayor's Youth Leadership Council at Stamford High, which is a program of the Stamford Youth Services Bureau. On behalf of our combined 200 plus members, we are testifying in opposition to *HB 5170, An Act Concerning Students' Rights to Privacy*.

Over the years, we have testified about several of our social issues: child abuse, human trafficking, the rights of immigrants, and sexual harassment and assault. This testimony, given the recent school shooting in Parkland, Florida, has been the most difficult for us to write. We participated in a student forum last week to talk about the Parkland shooting. Students debated the merits of arming teachers, installing metal detectors, allowing national guardsmen to patrol our schools, and improving school climate and culture.

The debate was passionate and heart-felt, and it was stopped cold, in a good way, by a veteran school administrator. She talked about her teaching career in the Watts section of Los Angeles, the protests she attended and the "police state" atmosphere that enveloped her school. She closed by saying, "Do not give up your rights because you will never get them back." That was the only time the rights of an individual were raised. It made us think about HB 5170 and how to balance the rights of one and the safety of many.

We understand that teachers and administrators want to keep us safe, and that they have to enforce school policy when it comes to cell phones and other devices, but we're concerned it may come at the expense of some of our rights. The easy step would be for a "judge to declare a cell phone exception to New Jersey vs. *T.L.O.*, effectively

requiring a warrant whenever school officials seek to secure digital content (1). It's a long shot, we know, so we've given you a dozen suggestions to think about. We'll highlight just a few from our written testimony.

1.Lines 2 through 9: You may want to define "mobile electronic device" as a device that is owned by a student, parent, or guardian.

2.Lines 10 though 19 include just about every adult in our schools, many of whom are not trained in educational policy, violations thereof, or the confiscation of a mobile device. Also, have you given any thought to including students in this section? Based on the philosophy "*If you see something, if you hear something, then do something*" that is promoted at our schools, we know of several instances in which students turned in a friend's phone because they knew it included evidence of a school violation.

3.Can a school administrator confiscate and search a student's phone based on a message that is left on the school's anonymous tip line?

4.Line 26: You may want to define "located on school property" to include during school and non-school hours; during non-academic events; on the bus to and from school; and on a team bus to and from an athletic event.

5.Lines 26-29: Is the "reasonable suspicion" based on the fact that a student may have violated a school policy, violated a school policy using his cell phone, that his cell phone may contain evidence of the violation, or all three.

6.Line 27: You may want it to read, "...has violated, is violating, or plans to violate educational policy."

7.Lines 29-30: You may want to explain the rationale for confiscating and searching the phone of someone who "...poses a risk of imminent personal injury to such student or others." Are you assuming that the student may have used his phone to communicate harm to himself or others?

8.Keep in mind that school district codes of conduct, family handbooks, and acceptable use agreement policies do not state that phones may be searched, or that a parent's permission will be secured to conduct a search. All three documents mention that phones may be confiscated, but not searched, thereby giving families and students a reasonable expectation of privacy.

9.Is there a statute of limitations for the confiscation and search of a mobile device? For example, let's say a teacher learns that a student was involved in a school or law violation last school year, and has reason to believe that the student's phone has evidence of the violation. May she confiscate the student's phone?

10. Lines 33 to 40: Is a student required to give a school administrator the password to the mobile device?

11.Lines 41-46: We suggest that the school employee who confiscates a student's phone submit a written report when he hands the phone to an administrator.

12. Finally, the bill ought to state that an administrator's search of a phone has to pass a two-part test: "...there has to be a sound reason to expect evidence of wrongdoing to be found, and the searches must not be excessively intrusive (2)."

We believe the searches of phones can be intrusive simply because of the amount of data they contain. According to the U.S. Supreme Court in *Riley vs California*, "...a cell phone or other smart device can contain millions of pages of text, thousands of pictures, or hundreds of videos consisting of all of the owner's digital activity for long periods of time (3)."

In addition, "the Justices noted that smart devices, when linked to 'cloud computing,' create a network such that...searching a cell phone may be accessing information that is well beyond [any] papers and effects in the physical proximity of an arrestee." Finally, the Justices noted that "...smart devices combine with digital storage technology to create a unique type of personal property (to) create a unique expectation of privacy for students (4).

Thanks for the opportunity to testify.

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Notes

1.Bernard James, "TLO and Cell Phones: Student Privacy and Smart Devices," *Iowa Law Review*, 2016. <https://ilr.law.uiowa.edu/print/volume-101-issue-1/t-l-o-and-cell-phones-student-privacy-and-smart-devices-after-riley-v-california/>

2."Students: Know Your Rights," not dated. <https://aclum.org/sites/all/files/education/StudentRights.pdf>

3.*Ibid*, James.

4.*Ibid*.